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**OFFICE OF PETITIONS** 

In re Application of Suzuki et al.

Application No. 09/827,639

Filed: April 6, 2001 Patent No.: 6,985,501

Attorney Docket No. 6983/64

: DECISION DISMISSING PTA REQUEST

This is a decision on the "REQUEST FOR RECONSIDERATION Of PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR 1.705(d)," timely filed on March 10, 2006. Patentees request that the patent issuing from the above-identified patent application be afforded a patent term adjustment of thirteen hundred and eight (1308) days rather that the USPTO calculation of eight hundred and ninety-three (893) days.

Patentees request for reconsideration is **DISMISSED.** The Office maintains that 893 days is the proper calculation of patent term adjustment at the time of the issuance of the patent.

Patentees assert that 893 days is inaccurate because the Office failed to provide any additional time for the provisions of 37 CFR 1.702(b). Patentees assert that the patent issued 644 days beyond the three year anniversary date. Patentees assert that only 226 days of the days overlap with the 644 days due to exceeding the three year provision. Accordingly, patentees believe that an additional 415 days (664-229=415) should be added to the 893-day determination that the Office calculated for PTA.

Patentees arguments are not persuasive. Patentees should be advised that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35

U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). Accordingly, because the amount of delay accrued exceeded the three year amount, the Office awarded no additional PTA under 37 CFR 1.702(b).

The Office acknowledges authorization to charge a fee of the \$200.00 fee set forth in 37 CFR 1.18(e) to Deposit Account 23-1925. No additional fees are required.

The application file is being forwarded to the file repository for proper maintenance of the patented file.

Telephone inquiries specific to this matter should be directed to Kery Fries at 571-272-7757.

Kery Fries

Senior Legal Advisor

Office of Patent Legal Administration

Office of Deputy Commissioner

for Patent Examination Policy

cc: PAIR calculation



Day : Saturday Date: 9/2/2006 Time: 12:13:03

| PTA Calculations for Application: <u>09/827639</u> |                         |     |  |  |  |  |  |  |
|--|-------------------------|-----|--|--|--|--|--|--|
| Application Filing Date: 04/06/2001                | PTO Delay (PTO):        | 896 |  |  |  |  |  |  |
| Issue Date of Patent: 01/10/2006                   | Three Years:            | 0   |  |  |  |  |  |  |
| Pre-Issue Petitions: 0                             | Applicant Delay (APPL): | 3   |  |  |  |  |  |  |
| Post-Issue Petitions: 0                            | Total PTA (days):       | 893 |  |  |  |  |  |  |
| PTO Delay Adjustment: 0                            |                         |     |  |  |  |  |  |  |

| File Contents History |            |  |          |      |       |  |  |  |  |
|-----------------------|------------|--|----------|------|-------|--|--|--|--|
| Number                | Date       | Contents Description   | PTO      | APPL | START |  |  |  |  |
| 33.5                  | 12/21/2005 | PTA 36 MONTHS  |          |      |       |  |  |  |  |
| 33                    | 01/10/2006 | PATENT ISSUE DATE USED IN PTA<br>CALCULATION                   | 4        |      | 28    |  |  |  |  |
| 32                    | 12/13/2005 | EXPORT TO FINAL DATA CAPTURE                                   |          |      |       |  |  |  |  |
| 31                    | 12/10/2005 | FINISHED INITIAL DATA CAPTURE                                  |          |      |       |  |  |  |  |
| 30                    | 12/12/2005 | DISPATCH TO FDC  |          |      |       |  |  |  |  |
| 29                    | 11/08/2005 | APPLICATION IS CONSIDERED READY FOR ISSUE                      |          |      |       |  |  |  |  |
| 28                    | 09/06/2005 | ISSUE FEE PAYMENT VERIFIED                                     |          |      |       |  |  |  |  |
| 27                    | 09/06/2005 | ISSUE FEE PAYMENT RECEIVED                                     |          |      |       |  |  |  |  |
| 26                    | 06/22/2005 | EXPORT TO INITIAL DATA CAPTURE                                 |          |      |       |  |  |  |  |
| 25                    | 06/17/2005 | MAIL NOTICE OF ALLOWANCE                                       | 10       |      | 15    |  |  |  |  |
| 24                    | 06/15/2005 | ISSUE REVISION COMPLETED                                       |          |      |       |  |  |  |  |
| 23                    | 06/15/2005 | NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED                |          |      |       |  |  |  |  |
| 22                    | 06/15/2005 | CASE DOCKETED TO EXAMINER IN GAU                               |          |      |       |  |  |  |  |
| 21                    | 06/13/2005 | NOTICE OF ALLOWABILITY   |          |      |       |  |  |  |  |
| 20                    | 04/21/2005 | IFW TSS PROCESSING BY TECH CENTER<br>COMPLETE                  |          |      |       |  |  |  |  |
| il I                  | 04/06/2001 | REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED) |          |      |       |  |  |  |  |
| 17                    | 02/07/2005 | NEW OR ADDITIONAL DRAWING FILED                                |          |      |       |  |  |  |  |
| 16                    | 04/21/2005 | DATE FORWARDED TO EXAMINER                                     |          |      |       |  |  |  |  |
| 15                    | 02/07/2005 | RESPONSE AFTER NON-FINAL ACTION                                |          | 3    | 12    |  |  |  |  |
| 14                    | 05/14/2003 | REFERENCE CAPTURE ON IDS                                       |          |      |       |  |  |  |  |
| 13                    | 02/07/2005 | WORKFLOW INCOMING AMENDMENT IFW                                |          |      |       |  |  |  |  |
| 12                    | 11/04/2004 | MAIL NON-FINAL REJECTION                                       | 882      |      | -1    |  |  |  |  |
| 11                    | 11/01/2004 | NON-FINAL REJECTION  |          |      |       |  |  |  |  |
|                       |            |  | <u> </u> |      |       |  |  |  |  |

|   |            | CASE DOCKETED TO EXAMINER IN GAU                            | L |  |
|---|------------|---|---|--|
| 9 | 05/14/2003 | INFORMATION DISCLOSURE STATEMENT (IDS)<br>FILED             |   |  |
| 8 | 03/11/2002 | CASE DOCKETED TO EXAMINER IN GAU                            |   |  |
| 7 | 09/07/2001 | CASE DOCKETED TO EXAMINER IN GAU                            |   |  |
| 6 | 08/23/2001 | APPLICATION DISPATCHED FROM OIPE                            |   |  |
| 5 | 05/22/2001 | APPLICATION IS NOW COMPLETE                                 |   |  |
| 4 |            | NOTICE MAILEDAPPLICATION INCOMPLETE<br>FILING DATE ASSIGNED |   |  |
| 3 | 05/21/2001 | CORRESPONDENCE ADDRESS CHANGE                               |   |  |
| 2 | 04/22/2001 | IFW SCAN & PACR AUTO SECURITY REVIEW                        |   |  |
| 1 | 04/06/2001 | INITIAL EXAM TEAM NN  |   |  |

Search Another: Application# Search

## **EXPLANATION OF PTA CALCULATION**

## **EXPLANATION OF PTE CALCULATION**

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Back to PALM | ASSIGNMENT | OASIS | Home page